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# In the Supreme Court of the United States

OCTOBER TERM, 1992

LOCAL 1814, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, PETITIONER

*v.*

NEW YORK SHIPPING ASSOCIATION, INC., ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

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## QUESTION PRESENTED

The Racketeer Influenced and Corrupt Organizations Act (RICO), enacted in 1970, grants district courts jurisdiction to issue injunctions to prevent and restrain RICO violations, including several directed specifically against union racketeering. 18 U.S.C. 1964(a). The Norris-LaGuardia Act, 29 U.S.C. 101, enacted in 1932, generally deprives district courts of jurisdiction to issue injunctions in cases "involving or growing out of any labor dispute," subject to certain statutory and judicially recognized exceptions. The question presented is:

Whether the Norris-LaGuardia Act deprived the district court of its jurisdiction under RICO to issue an injunction barring petitioner from proceeding with an arbitration that petitioner instituted solely for the purpose of preventing the district court from approving a settlement of a civil RICO case brought by the United States against the New York Shipping Association to eliminate the influence of organized crime and racketeering in the Port of New York and New Jersey.

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### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A34) is reported at 965 F.2d 1224. The oral opinion of the district court (quoted in part at Pet. App. A12-A16) is unreported.

### JURISDICTION

The judgment of the court of appeals was entered on June 1, 1992. The petition for a writ of certiorari was filed on July 22, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

1. The Port of New York and New Jersey [hereinafter the Waterfront] consists of separate ports sharing a common harbor and encompassing 234 municipalities and approximately 1500 square miles. The harbor plays a critical role in the movement of manufactured, agricultural, and other goods throughout the Eastern seaboard. As the second largest port in the world, it has a major impact on the Nation's commerce. S.A. 54.[1]

For more than 50 years, the Waterfront has been a setting for corruption, violence, and abuse of labor and business by organized crime families—a pattern of racketeering that has been facilitated by organized crime's control of Waterfront labor unions operating on the labor-intensive bottleneck of the docks in New York and New Jersey. S.A. 54, 88-167. The President's Commission on Organized Crime, chaired by Judge Irving R. Kaufman, described the "almost unfettered control exercised over the New York-New Jersey Waterfront by organized crime"; referred to the International Longshoremen's Association, AFL-CIO (ILA), as a "nest for waterfront pirates—a racket, not a union"; and concluded that the ILA, including petitioner Local 1814, "remain[s] firmly under the control of the Gambino and Genovese [organized crime] families." President's Commission on Organized Crime, *The Edge: Organized Crime, Business, and Labor Unions* 33, 39, 47 (1986). ILA membership is required for anyone performing longshore or related work at the Waterfront. J.A. 152.

[1] "S.A." refers to the Supplemental Appendix filed in the court of appeals. "J.A." refers to the Joint Appendix filed in the court of appeals.

In an effort to eliminate the influence of organized crime on the Waterfront, the United States instituted a civil RICO action on February 20, 1990, against purported members of the Genovese and Gambino organized crime families, purported members of the "Westies" organized crime group, six local unions (including petitioner), two Waterfront employers, and two Waterfront employers' organizations, including respondent New York Shipping Association, Inc. (NYSA).[2] Pet. App. A4. The complaint charged the defendants with extortion, murder, embezzlement, labor payoffs, mail fraud, and other acts of racketeering. S.A. 51-175. It sought equitable relief to dislodge the pervasive infiltration by organized crime of the ILA and commercial operations on the Waterfront, including prohibitions against involvement by organized crime members and their associates with the ILA and the reform of disciplinary and election procedures within union locals to prevent future influence of organized crime. Four of the union locals, including petitioner, entered into consent decrees with the government. Pet. App. A4; S.A. 269.

[2] NYSA is a multi-employer association of vessel carriers, stevedoring companies, and other maritime companies. Its members employ longshore workers and other employees at piers and waterfront terminals to handle freight transported by water to and from the Port of New York and New Jersey. As a multiemployer bargaining representative, NYSA negotiates and administers collective bargaining agreements with the ILA. J.A. 2-3; NYSA C.A. Br. 4 n.2. NYSA was not named as a RICO violator in the RICO complaint; it was named as a representative of employers in industries affecting Waterfront commerce in order to effectuate complete relief. Pet. App. A4. Members of NYSA were, however, charged with various offenses.

Petitioner's consent decree (S.A. 269-294) was entered into after nearly nine weeks of trial, and it has been approved by the district court. Pet. App. A5. In that decree, petitioner expressly acknowledges "that there have been Government allegations, sworn testimony, and public findings regarding corruption of [petitioner] by La Cosa Nostra, and criminal prosecutions reflecting involvement in La Cosa Nostra on the part of [petitioner's] officials"; and petitioner "agrees that there should be no criminal element or La Cosa Nostra corruption of any part of the ILA, including [petitioner]." S.A. 269-270. The consent decree also permanently enjoins union officers and members from committing acts of racketeering activity and from "knowingly and improperly associating with any member or associate of any La Cosa Nostra crime family or any other criminal group." S.A. 271. The district court retains jurisdiction to supervise implementation of the decree. S.A. 285.

2. Late in 1991, NYSA and the government executed a stipulation of settlement in the form of a proposed consent judgment in the Waterfront RICO case. J.A. 56-63. The provision at issue here states that NYSA will not knowingly employ any individual whose name appears on a list (approved by the district court) of individuals prohibited from seeking, obtaining, or remaining in employment on the Waterfront. Pet. App. A6. Such individuals in-clude persons found in the Waterfront RICO case to have committed a RICO violation; persons determined by a United States District Court to be a member of any organized crime group; and anyone who has aided and abetted any such person in committing a federal felony in the Port of New York and New Jersey. NYSA may apply to the district court to have any person placed on the list, and proceedings for that purpose are to be conducted

under the Federal Rules of Evidence. *Ibid.* The proposed settlement has not yet been accepted by the district court. Pet. 11.[3]

3. Petitioner and NYSA are parties to a collective bargaining agreement that provides for arbitration of any "grievance, dispute, complaint or claim arising out of or relating to" the agreement. See Pet. App. A7. Petitioner filed a grievance under this provision seeking to prevent NYSA from entering into the proposed consent judgment. Petitioner contended that the proposed judgment would create new grounds for discharge beyond those identified in the collective bargaining agreement, and would make a prohibited unilateral change in the agreement. After the labor-management panels reached a deadlock in the first three stages of the contract's grievance machinery, the grievance was referred to arbitration. *Ibid.* NYSA was reluctant to challenge the arbitration, "lest it precipitate a nonenjoinable strike that would cause substantial, devastating, and irreparable economic harm to the Port." NYSA C.A. Br. 10.

4. Petitioner, apparently concerned that the district court's approval of the proposed consent judgment would preempt arbitration and override the contract, filed the instant suit in the district court seeking a preliminary and permanent injunction to prevent NYSA from taking any action to effectuate the proposed judgment. The United States intervened as a defendant and agreed that the consent

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[3] Contrary to petitioner's suggestion (Pet. 13, 18), there is no reason to believe that the consent decree goes beyond what the court could order following a trial, or that it is a ploy to extend the court's jurisdiction. Rather, the decree simply complements the provisions of petitioner's consent decree that permanently bar members from associating with organized crime.

judgment would not be entered pending disposition of this case. Pet. App. A8. However, when petitioner sought to expedite arbitration, "despite the absence of any truly exigent circumstances," *id.* at A10, the United States moved for an injunction against the arbitration.

After hearing argument and learning that the arbitrator would hear the grievance and render a decision within a few hours (J.A. 23-24), the district court, on December 20, 1991, preliminarily enjoined petitioner from arbitrating its grievance regarding the proposed consent decree. J.A. 87, 138. In response to questioning by the district court, petitioner made it clear that if the arbitration went forward, petitioner would argue that the district court was without authority to approve and enter the consent judgment between NYSA and the United States. J.A. 108-109. In particular, petitioner stated that the arbitrator would be asked to issue an order directing NYSA to cease and desist from bringing the proposed consent judgment before the district court, which would upset the settlement in the pending RICO case. J.A. 109, 117, 118, 119.

On January 9, 1992, following further argument, the district court permanently enjoined petitioner from proceeding with the arbitration. J.A. 288. In an oral opinion quoted in part by the court of appeals, the district court rejected the contention that an injunction staying the arbitration would violate the Norris-LaGuardia Act, 29 U.S.C. 101-115, holding that it had jurisdiction under the RICO statute, the All Writs Act, 28 U.S.C. 1651, and the court's inherent power to preserve its jurisdiction. Pet. App. A13. The court found that an injunction was required to prevent petitioner from going forward with arbitration of a non-arbitrable issue: the balancing of the respective

rights of all parties whose interests were implicated by the proposed consent judgment, including the public interest as expressed in the RICO statute. *Id.* at A15-A16. The court explained (*id.* at A15):

> Counsel have acknowledged, as indeed the cases compel them to do, that it would be beyond the scope of the arbitrator's reference and authority to consider public-interest questions, to consider the RICO context out of which the proposed consent decree emerges, [or] to consider the record adduced after 42 trial days in this case * * * . It is only this Court that can make that determination. It is not an arbitrable determination.

5. In what it termed a "narrow" decision, Pet. App. A34, the court of appeals affirmed. *Id.* at A1-A34. It held that "when injunctive relief in what would otherwise be a 'labor dispute' is properly sought to further RICO's remedial purposes, the anti-injunction provisions of Norris-LaGuardia are inapplicable, and a federal court has jurisdiction to grant injunctive relief." *Id.* at A34.

The court of appeals acknowledged that the Norris-LaGuardia Act must be read broadly. But it also recognized this Court's holdings that a district court "does have jurisdiction to grant injunctive relief * * * when the Norris-LaGuardia Act must be reconciled with the mandates of a specific federal statute." Pet. App. A19 (citing *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235, 251 (1970), and *Jacksonville Bulk Terminals, Inc.* v. *ILA*, 457 U.S. 702, 717 n.17 (1982)). The court of appeals found RICO to be such a statute.

First, the court noted the inter-relationship between RICO and labor activities, quoting the congressional finding that "organized crime's 'money and

power are increasingly used to infiltrate and corrupt legitimate business *and labor unions*,'" and Congress's statement of purpose to eradicate organized crime by, *inter alia*, "providing * * * *new remedies* to deal with the unlawful activities of those engaged in organized crime." Pet. App. A29 (quoting the Statement of Findings and Purpose of the Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 923 (emphasis added by court)).

Second, the court of appeals pointed out that when Congress enacted RICO in 1970, it specifically focused on the infiltration of organized labor and the waterfront by organized crime. Thus, the court stated that "Congress was aware that organized crime 'quietly continues to infiltrate and corrupt organized labor,'" and that "*waterfront entrepreneurs* have been persuaded for labor peace to countenance gambling, loan-sharking, and pilferage. As the takeover of organized crime cannot be tolerated in legitimate business, so, too, it cannot be tolerated here." Pet. App. A29 (quoting S. Rep. No. 617, 91st Cong., 1st Sess. 78 (1969)). The court also found it significant that four of the enumerated predicate acts of racketeering activity defined in RICO involve matters pertaining to unions: "embezzlement of employee plan funds, employee benefit plan kickbacks, illegal labor payoffs, and embezzlement of union funds." Pet. App. A29-A30 (citing 18 U.S.C. 1961(1)(B) and (C)).

Finally, the court of appeals relied on the "special tools" Congress had enacted "to aid in the eradication of organized crime," including a directive that RICO be liberally construed in order to effectuate its remedial purposes (§ 904(a), 84 Stat. 947); a grant of jurisdiction to the district courts to prevent and restrain RICO violations "by issuing appropriate orders" (see

18 U.S.C. 1964(a)); and special authority for the Attorney General "to bring civil actions such as the civil RICO action underlying this case" (see 18 U.S.C. 1964(b)). Pet. App. A30. The court reasoned that "[o]nce the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation," "the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction." *Ibid.*

## ARGUMENT

The court of appeals correctly applied settled principles in holding that the injunction entered by the district court in this case is not barred by the Norris-LaGuardia Act. Its ruling does not conflict with any decision of this Court or any other court of appeals. Moreover, the subject matter of the arbitration against which the injunction was entered —removal of longshore workers associated with organized crime from employment on the Waterfront —has been withdrawn from the scope of the collective bargaining agreement by petitioner's own agreement to a consent decree that permanently enjoins it from having members who are associated with organized crime, and that authorizes the district court to supervise implementation of the decree. The court of appeals' affirmance of the injunction entered in these unique circumstances does not warrant review by this Court.

1.a. Although the Norris-LaGuardia Act by its terms broadly bars injunctions in matters "involving or growing out of a labor dispute," 29 U.S.C. 101, petitioner concedes (Pet. 4) that there are a number of exceptions to that bar. As the Court stated in *Boys Markets*, the federal courts must accommodate the "seemingly absolute terms of the Norris-LaGuardia

Act and the policy considerations underlying [other statutes]," and "consideration must be given to the total corpus of pertinent law and the policies that inspired ostensibly inconsistent provisions." 398 U.S. at 249-250. Thus, the Norris-LaGuardia Act does not apply to labor disputes "in limited situations where necessary to accommodate the Act to specific federal legislation or paramount congressional policy." *Jacksonville Bulk Terminals*, 457 U.S. at 707-708.

As the court of appeals pointed out, a primary goal of RICO is to purge unions of the influence of organized crime. Accordingly, RICO undoubtedly is "pertinent law," to which the Norris-LaGuardia Act must be accommodated. It is of no moment that RICO does not specifically state that it carves out an exception to the Norris-LaGuardia Act. Congress "has the power to decide what the policy of the law shall be, and if it has intimated its will, however indirectly, that will should be recognized and obeyed." *United States* v. *Hutcheson*, 312 U.S. 219, 235 (1941). Here, Congress's goals of purging unions of racketeering, and of authorizing injunctive actions by the Attorney General to that end, are far more than "intimated * * * indirectly." They are spelled out in RICO itself, and in the Organized Crime Control Act of 1970 in which RICO was enacted.[4]

[4] Arbitration is not among the specific acts that the Norris-LaGuardia Act enumerates as being protected from restraining orders or injunctions. See 29 U.S.C. 104(a)-(i). Although the Act nevertheless applies to such injunctions, it is not unreasonable for a court to find greater latitude for accommodating overriding policies in other federal statutes where the injunction is not at the core of Congress's concern in passing the Act.

Against the foregoing background, the court of appeals was correct in holding that this case represents one of the narrowly defined situations in which it is necessary to accommodate the Norris-LaGuardia Act to a specific federal statute (the more recently enacted RICO statute), and that the Norris-LaGuardia Act must yield to the paramount congressional policy that labor unions be purged of organized crime and racketeering. Indeed, this case is closely akin to one of the exceptions set forth in the Norris-LaGuardia Act itself—the interdiction of violence and fraud. See 29 U.S.C. 104(i). The underlying RICO complaint in this case is rife with specific allegations of violence and fraud (see S.A. 89-163), and the prohibition against involvement by organized crime in petitioner is intended to eliminate that type of violence and fraud. In short, "[t]he Norris-LaGuardia Act was responsive to a situation totally different from that" at issue in this case. *Boys Markets*, 398 U.S. at 250.

b. As petitioner points out (Pet. 19-21), there are numerous decisions of this Court and the courts of appeals enforcing the Norris-LaGuardia Act's anti-injunction provision; some of those decisions hold that injunctions against arbitration are generally barred by the Act. But petitioner's citation to those decisions misses the point. This case involves not the scope of the Act's prohibition as a general matter, but an *exception* to that prohibition by virtue of the RICO statute. As to the latter issue, petitioner has cited no case holding that the RICO statute's substantive prohibitions and remedies must yield to the general terms of the Norris-LaGuardia Act, even when an injunction against arbitration is essential to enforcing RICO's mandates. The decisions of this Court and other courts of appeals cited by petitioner involve

statutes other than RICO, and therefore present no conflict with the decision below.

c. Contrary to petitioner's suggestion (Pet. 5), this is not a case in which a party seeks to avoid a contractual obligation to arbitrate. Arbitration cannot vindicate the rights of union members who are associated with organized crime to retain their union membership and employment, because such membership is permanently barred by the consent decree entered into by petitioner with the United States. Moreover, it was the United States—not NYSA—that sought and obtained the injunction in this case. Cf. *United States* v. *United Mine Workers*, 330 U.S. 258, 269-273 (1947).

2. The injunction entered by the district court in this case is justified by more than the limited exception to the Norris-LaGuardia Act that is carved out by the RICO statute. Here, the subject matter of the arbitration that the district court enjoined—employment rights for union members associated with organized crime—has been withdrawn from the contract between petitioner and NYSA by petitioner's own consent decree in the RICO case. That decree permanently enjoins union officers and members from "knowingly and improperly associating with any member or associate of any La Cosa Nostra crime family or any other criminal group." S.A. 271. Consequently, union membership, and hence Waterfront employment (see J.A. 152), are strictly forbidden for individuals associated with organized crime. As a result, the matter is not arbitrable. It therefore is not, insofar as petitioner and its members are concerned, a matter "involving or growing out of a

labor dispute" within the meaning of the Norris-LaGuardia Act.[5]

Moreover, because the district court retained jurisdiction to supervise implementation of the consent decree between petitioner and the United States (S.A. 285), the order at issue here could properly have been entered as an exercise of the court's supervisory jurisdiction under that decree. The fact that the order instead carried the caption of the instant case, which was brought by petitioner to circumvent the RICO case, does not elevate a narrow issue arising out of the particular consent decree between petitioner and the United States into a question of general importance warranting review by this Court.[6]

3. Contrary to petitioner's closing characterization of the decision below, this is hardly a case of cutting down every law in the land to get at the devil. See Pet. 23. The court of appeals simply applied settled law to conclude that, in the narrow instance before the court, Congress intended the RICO statute to override the Norris-LaGuardia Act's general proscription against injunctions in cases arising out of labor disputes. Moreover, this case could have been decided on the alternative ground that petitioner's RICO settlement withdrew from the scope of collective bargaining and arbitration the subject of employing longshore workers who are associated

[5] A judgment may be defended on any ground that the law and the record permit. *United States* v. *New York Telephone Co.*, 434 U.S. 159, 166 n.8 (1977).

[6] Petitioner's concerns (Pet. 16 n.9) about the due process rights of members who may be falsely accused of organized-crime associations are premature. The consent decree between NYSA and the United States has not been approved, and petitioner accordingly may present its concerns to the district court at the appropriate time.

with organized crime, and instead submitted that subject matter to the jurisdiction of the district court pursuant to the settlement and the RICO statute. That unremarkable result scarcely constitutes the sort of lawless judicial behavior that petitioner describes.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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